



NATIONAL CONGRESS OF AMERICAN INDIANS

July 25, 2013

The Honorable Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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NCAI HEADQUARTERS
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**Re: NCAI Comments on Rate of Return Represcription Staff Report
Dockets – WC Nos. 10-90, 07-135, 05-337, 03-109; GN No. 09-51; CC Nos.
96-45, 01-92; WT No. 10-208**

Dear Secretary Dortch—

On behalf of the National Congress of American Indians (NCAI), the oldest and largest representative organization of American Indian and Alaska Native tribal governments, I respectfully submit these comments regarding the Wireline Competition Bureau Staff Report on *Prescribing the Authorized Rate of Return: Analysis of Methods for Establishing Just and Reasonable Rates for Local Exchange Carriers* (Staff Report).

I. BACKGROUND

On May 16, 2013, the Federal Communications Commission's (FCC) Wireline Competition Bureau released a Staff Report proposing to change Rate of Return (RoR) regulations for incumbent Local Exchange Carriers (iLECs). The current RoR was authorized in 1990 at 11.25 percent and the Staff Report proposes to represcribe the RoR to a lower rate between 7.39 and 8.72 percent. Our concern is that the data used in the Staff Report does not take into consideration the unique financial circumstances of tribally-owned and operated telecommunications carriers. These tribally-owned and operated carriers were established by their respective tribal governments, whose principle assets are lands held in trust by the federal government. Since tribally-owned and operated carriers cannot collateralize these trust land assets they have a substantially limited ability to access credit and capital.

Therefore, the current 11.25 percent RoR greatly benefits tribally-owned and operated carriers in their efforts to deploy communications services in areas of Indian Country previously unserved or underserved. Additionally, ten of the twelve tribally-owned and operated carriers have been designated by the FCC as RoR carriers, which necessitates the development of a tribal specific proxy if RoR represcription is to be considered. Also, due to the limited abilities of tribal carriers to access credit and capital they have an increased reliance on Universal Service Fund (USF) support such as the Interstate Common Line Support and High Cost Loop Support subsidies.

II. TRIBAL CONCERNS REGARDING RATE OF RETURN REPRESRIPTION

Recognizing the importance of this issue and how the represcription of RoR regulations could affect tribally-owned and operated carriers, tribal leadership adopted NCAI Resolution #REN-13-063, *Request that the Federal Communications Commission Work with Tribally-Owned and Operated Telecommunications Carriers to Establish a Tribal Proxy* (Attached). During NCAI's Midyear Conference this past June, tribal leaders and technical experts gathered and identified several issues with the FCC Staff Report on RoR represcription.

First, the FCC Staff Report relies on data compiled from 16 publicly-traded telecommunications providers consisting of three groups: Regional Bell Holding Companies, Mid-Size Proxy Companies, and Rural Local Exchange Carriers. These three groups do not reflect the unique tribal specific financial environments and challenges experienced by tribally-owned and operated carriers. Therefore, as referenced in NCAI Resolution #REN-13-063, the FCC should develop a tribal proxy to calculate a unique zone of reasonableness of RoR for tribally-owned and operated carriers that takes into consideration the unique access to credit and capital issues of tribal carriers.

Additionally, a number of tribes, tribally-owned and operated carriers, and tribal organizations have previously filed comments at the FCC which state that lowering the current RoR would have significant adverse effects on vital revenues of certain tribally-owned and operated carriers.¹

Finally, the FCC has previously recognized the unique and tribal specific challenges that exist on tribal lands. In the *USF/ICC Transformation Order* the FCC acknowledged that:

Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital.²

However, despite this acknowledgement, the Staff Report recommends a lower RoR rate. Tribal leaders and technical experts reiterate their concern that if a lower RoR rate is adopted, it would

¹ See Gila River Indian Community & Gila River Telecommunications, Inc. Reply Comments. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021861521>

See Hopi Telecommunications, Inc. Comments. January 18, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021754440>.

See National Tribal Telecommunications Association Comments. January 18, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021754617>.

See Mescalero Apache Telecom, Inc. Comments. January 18, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021753875>.

² See Federal Communications Commission. *USF/ICC Transformation Order*. Adopted October 27, 2011. Published November 18, 2011. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.

have disastrous effects for tribally-owned and operated carriers by further reducing USF support. To add perspective, it is worth noting that many of the tribally-owned and operated carriers were created out of necessity, as opposed to an economic development initiative, because non-tribal telecommunications providers refused to deploy infrastructure to provide these services on tribal lands. Also, tribal carriers are often the only providers offering affordable telephone and Internet to reservation tribal and non-tribal residents.

In closing, we oppose any elimination or reduction of support for tribally-owned and operated carriers and we hope to work with you on addressing this very important issue in a manner that takes into account the unique role of these carriers. If you have any questions or concerns, please contact Brian Howard, NCAI Legislative Associate, at bhoward@ncai.org or (202) 466-7767. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, reading "Jacqueline Pata". The signature is written in a cursive, flowing style.

Jacqueline Pata
Executive Director
National Congress of American Indians



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #REN-13-063

TITLE: Request that the Federal Communications Commission Work with Tribally-Owned and Operated Telecommunications Carriers to Establish a Tribal Proxy

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, on October 27, 2011, the Federal Communications Commission (FCC) adopted the *Universal Service Fund/Intercarrier Compensation Transformation Order (Order)*, in which the FCC, among other things, initiated a proceeding to represcribe the authorized rate of return, which will have significant effects on revenues for certain tribally-owned and operated telecommunications carriers; and

WHEREAS, the FCC acknowledged in the *Order* that tribally-owned and operated telecommunications carriers cannot collateralize trust land assets, and as a result have a substantially more limited ability to access credit and capital than their non-tribally-owned counterparts; and

WHEREAS, the FCC further acknowledged in the *Order* that tribally-owned and operated telecommunications carriers face unique circumstances not encountered by their non-tribally-owned counterparts and play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country; and

WHEREAS, the FCC specifically inquired and recognized, under paragraph 1059 of the Order, that tribally-owned and operated telecommunications carriers serve cyclically impoverished communities with a historical lack of critical infrastructure, and that reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country; and

WHEREAS, a number of tribes, tribal telecommunications carriers, and tribal organizations, such as the Gila River Indian Community and Gila River Telecommunications, Inc., Mescalero Apache Telecom, Inc., Hopi Telecommunications Inc., and the National Tribal Telecommunications Association

(tribal commenters) filed comments in the FCC's Electronic Comment Filing System raising concerns that lowering the current rate of return would have significant adverse effects on vital revenues of certain tribally-owned and operated telecommunications carriers; and

WHEREAS, the filings submitted by the tribal commenters further stated that costs incurred for network operations and investment by tribally-owned and operated telecommunications carriers are significantly higher than for telecommunications carriers not operating on Tribal lands; and

WHEREAS, the filings by the tribal commenters also stressed tribal specific and unique challenges tribally-owned and operated telecommunications carriers experience, which include obligations to provide service to all residents at the same standard rate, increased costs and delays with obtaining cultural clearance for rights-of-way on tribal lands, a lack of technically trained individuals on tribal lands, customer bases that are largely dependent on Lifeline support, and increased business risks assumed to provide services for median household incomes significantly lower than the national average; and

WHEREAS, the currently authorized rate of return is 11.25 percent on May 16, 2013, the FCC's Wireline Competition Bureau prepared a staff report recommending the FCC consider establishing the authorized rate of return at approximately 8 percent; and

WHEREAS, this lower rate of return would negatively impact the revenues of certain Tribally-owned and operated telecommunications carriers and would likely have significant adverse effects on the levels of service provided to such carriers' tribal and non-tribal customers; and

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians hereby respectfully urges the FCC to direct the Office of Native Affairs and Policy and Wireline Competition Bureau to develop a tribal proxy for the purposes of calculating a unique zone of reasonableness for a rate-of-return for tribally-owned and operated telecommunications carriers due to the unique economic disparities that exist in tribal communities, a very different weighted access to capital of such carriers, the inability of such carriers to collateralize trust land assets, the limited ability of such carriers to access credit and capital, the vital role such carriers play in serving the needs of interests of their local communities, and the economic challenges encountered by such carriers in providing service on tribal lands to tribal and non-tribal customers; and

BE IT FURTHER RESOLVED, that NCAI respectfully urges the FCC to send a representative(s) from the Office of Native Affairs and Policy to all NCAI conferences for consultation purposes; and

BE IT FURTHER RESOLVED, that the FCC, Office of Native Affairs and Policy develop a consultation plan to engage all tribal nations across the country at various venues and tribal gatherings to ensure tribal issues are considered for all FCC dockets; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2013 Midyear Session of the National Congress of American Indians, held at the Atlantis Casino from June 24 - 27, 2013 in Reno, Nevada with a quorum present.



President**ATTEST:**

Recording Secretary